

Social Security Administration

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overpayment less any amounts paid prior to such default.

[34 FR 14889, Sept. 27, 1969; 34 FR 15413, Oct. 3, 1969]

§ 404.520 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

(a) The standards we will apply and the procedures we will follow before requesting the Department of the Treasury to offset income tax refunds due taxpayers who have an outstanding overpayment are set forth in §§ 404.520 through 404.526. These standards and procedures are authorized by 31 U.S.C. 3720A and are implemented through Department of the Treasury regulations at 31 CFR 285.2.

(b) We will use the Department of the Treasury tax refund offset procedure to collect overpayments that are certain in amount, past due and legally enforceable, and eligible for tax refund offset under regulations issued by the Department of the Treasury. We will use these procedures to collect overpayments only from individuals who are not currently entitled to monthly Social Security benefits under title II of the Act. We will refer an overpayment to the Department of the Treasury for offset against tax refunds no later than 10 years after our right to collect the overpayment first accrued.

[62 FR 64277, Dec. 5, 1997]

§ 404.521 Notice to overpaid individual.

A request for reduction of a Federal income tax refund will be made only after we determine that an amount is owed and past due and send the overpaid individual written notice. Our notice of intent to collect an overpayment through tax refund offset will state:

(a) The amount of the overpayment;

(b) That unless, within 60 calendar days from the date of our notice, the overpaid individual repays the overpayment, sends evidence to us at the address given in our notice that the overpayment is not past due or not legally enforceable, or asks us to waive collection of the overpayment under section 204(b) of the Act, we intend to seek collection of the overpayment by requesting that the Department of the

Treasury reduce any amounts payable to the overpaid individual as refunds of Federal income taxes by an amount equal to the amount of the overpayment;

(c) The conditions under which we will waive recovery of an overpayment under section 204(b) of the Act;

(d) That we will review any evidence presented that the overpayment is not past due or not legally enforceable;

(e) That the overpaid individual has the right to inspect and copy our records related to the overpayment as determined by us and will be informed as to where and when the inspection and copying can be done after we receive notice from the overpaid individual that inspection and copying are requested.

[56 FR 52468, Oct. 21, 1991, as amended at 62 FR 64278, Dec. 5, 1997]

§ 404.522 Review within SSA that an overpayment is past due and legally enforceable.

(a) *Notification by overpaid individual.* An overpaid individual who receives a notice as described in § 404.521 has the right to present evidence that all or part of the overpayment is not past due or not legally enforceable. To exercise this right, the individual must notify us and present evidence regarding the overpayment within 60 calendar days from the date of our notice.

(b) *Submission of evidence.* The overpaid individual may submit evidence showing that all or part of the debt is not past due or not legally enforceable as provided in paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in referral of the overpayment to the Department of the Treasury, unless the overpaid individual, within this 60-day time period, has asked us to waive collection of the overpayment under section 204(b) of the Act and we have not yet determined whether we can grant the waiver request. If the overpaid individual asks us to waive collection of the overpayment, we may ask that evidence to support the request be submitted to us.

(c) *Review of the evidence.* After a timely submission of evidence by the overpaid individual, we will consider all available evidence related to the

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overpayment. If the overpaid individual has not requested a waiver we will make findings based on a review of the written record, unless we determine that the question of indebtedness cannot be resolved by a review of the documentary evidence. If the overpaid individual has asked us to make a waiver determination and our records do not show that after an oral hearing we had previously determined that he was at "fault" in accepting the overpayment, we will not deny the waiver request without first scheduling an oral hearing.

[56 FR 52469, Oct. 21, 1991, as amended at 62 FR 64278, Dec. 5, 1997]

§ 404.523 Findings by SSA.

(a) Following the hearing or a review of the record, we will issue written findings which include supporting rationale for the findings. Issuance of these findings concerning whether the overpayment or part of the overpayment is past due and legally enforceable is the final Agency action with respect to the past-due status and enforceability of the overpayment. If we make a determination that a waiver request cannot be granted, we will issue a written notice of this determination in accordance with the regulations in subpart J of this part. Our referral of the overpayment to the Department of the Treasury will not be suspended under § 404.525 pending any further administrative review of the waiver request that the individual may seek.

(b) Copies of the findings described in paragraph (a) of this section will be distributed to the overpaid individual and the overpaid individual's attorney or other representative, if any.

(c) If the findings referred to in paragraph (a) of this section affirm that all or part of the overpayment is past due and legally enforceable and, if waiver is requested, we determine that the request cannot be granted, we will refer the overpayment to the Department of the Treasury. No referral will be made to the Department of the Treasury if, based on our review of the overpayment, we reverse our prior finding that the overpayment is past due and legally enforceable or, upon consideration of a waiver request, we determine

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that waiver of our collection of the overpayment is appropriate.

[56 FR 52469, Oct. 21, 1991, as amended at 62 FR 64278, Dec. 5, 1997]

§ 404.524 Review of our records related to the overpayment.

(a) *Notification by the overpaid individual.* An overpaid individual who intends to inspect or copy our records related to the overpayment as determined by us must notify us stating his or her intention to inspect or copy.

(b) *Our response.* In response to a notification by the overpaid individual as described in paragraph (a) of this section, we will notify the overpaid individual of the location and time when the overpaid individual may inspect or copy our records related to the overpayment. We may also, at our discretion, mail copies of the overpayment-related records to the overpaid individual.

[56 FR 52469, Oct. 21, 1991]

§ 404.525 Suspension of offset.

If, within 60 days of the date of the notice described in § 404.521, the overpaid individual notifies us that he or she is exercising a right described in § 404.522(a) and submits evidence pursuant to § 404.522(b) or requests a waiver under § 404.506, we will suspend any notice to the Department of the Treasury until we have issued written findings that affirm that an overpayment is past due and legally enforceable and, if applicable, make a determination that a waiver request cannot be granted.

[56 FR 52469, Oct. 21, 1991, as amended at 62 FR 64278, Dec. 5, 1997]

§ 404.526 Tax refund insufficient to cover amount of overpayment.

If a tax refund for a given taxable year is insufficient to recover an overpayment completely, the case will remain with the Department of the Treasury for offset, assuming that all criteria for offset continue to be met.

[62 FR 64278, Dec. 5, 1997]

§ 404.527 Additional methods for recovery of title II benefit overpayments.

(a) *General.* In addition to the methods specified in §§ 404.502 and 404.520, an